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November 6, 2003  
Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

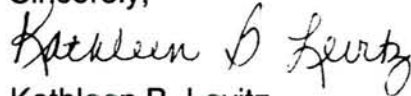
Re: WC Docket No. 01-321; WC Docket No. 02-112; and  
CC Docket No. 00-175

Dear Ms. Dortch:

This is to inform you that on November 5, 2003, Glenn Rabin, representing Alltel, Melissa Newman and John Kure, representing Qwest, Jim Smith and Jay Bennett, representing SBC, Clint Odom and Sherry Ingram, representing Verizon, Michael McMenamin, representing USTA, and Margaret Greene and I, representing BellSouth, met with Chairman Powell and his legal advisors, Sheryl Wilkerson and Christopher Libertelli. The purpose of our meeting was to discuss why in the view of the carriers represented at the meeting there was no need for the Commission to impose performance metrics, standards and reporting requirements upon any providers of special access services and why the imposition of federally prescribed self-effectuating penalties, fines and forfeitures would be unlawful. The attached documents summarize the points made by the carriers' representatives during the meeting.

In accordance with Section 1.1206, I am filing this notice electronically and request that you please place it in the record of the proceedings identified above. Thank you.

Sincerely,



Kathleen B. Levitz

Attachment

cc: Chairman Michael K. Powell  
Sheryl Wilkerson  
Christopher Libertelli

# **Special Access Performance Measurements**

(CC Docket No. 01-321)  
November 5, 2003

# Special Access Performance Measurements are Unnecessary

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- The special access market is competitive
- Interstate special access tariffs provide performance guarantees
- RBOCs are committed to, and are improving, their very good service to their special access customers and must continue to do so to remain competitive
- Negotiation can accomplish legitimate policy goals of any performance assurance plan and is a better tool to address the diverse needs of the special access marketplace
- The performance measurements and standards proposed by JCIIG are burdensome, unrealistic, unachievable, overly complex, subject to manipulation, and unjustified
- RBOCs currently report on key measures, both in aggregate and for specific customers, including certain JCIIG members
- Self effectuating penalties, fines and forfeitures are unlawful
- Bottom line: Proceeding should be closed with no further action. The JCIIG proposal should be rejected





# Supporting Information



# The Special Access Market is Competitive

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- The FCC has granted RBOCs Phase I and Phase II pricing flexibility relief for their interstate special access services
  - For special access and dedicated transport services, the FCC has granted Phase I relief in 255 MSAs and Phase II relief in 211 MSAs
  - For channel terminations to end users, the FCC has granted Phase I relief in 211 MSAs and Phase II relief in 104 MSAs
  - Since being granted this relief, the RBOCs have negotiated and filed multiple special access pricing flexibility contract tariffs

## The Special Access Market is Competitive (cont.)

- According to the 2002 Special Access Fact Report, the following year-end 2001 data highlights the competitiveness of the Special Access market.

<u>Data Component</u>	<u>Value</u>
CLEC fiber route miles (local and long-haul)	184,000
CLEC networks in top 150 MSAs	1,800
CLEC buildings served on-net	30,000
CLEC buildings served off-net	300,000
CLEC voice grade equivalent special access lines	140 Million
CLEC special access and private line revenues	\$10 Billion
CLEC special access market share (using FCC data)	30 Percent



# RBOC Commitment to Service

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## Current Interstate Tariff Provisions

- RBOCs currently provide service performance and installation guarantees in their interstate access tariffs in connection with their interstate high capacity special access services, as follows:
  - Service Installation Guarantees
    - BellSouth, Qwest, SBC, and Verizon tariff provisions provide credits up to the full non-recurring charge for a service installation due-date miss
  - Service Assurance Guarantees
    - BellSouth, Qwest, SBC, and Verizon tariff provisions provide credits on monthly recurring charges due to service interruptions and outages

## RBOC Commitment to Service (cont.)

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- Service Commitments
  - Provision of negotiated report packages are offered to many carriers. Other carriers may obtain results upon request.
  - The RBOCs provide a variety of customized reports through business to business exchanges.



# RBOC History of Very Good Service

The RBOCs have a history of providing very good service to their special access customers and will continue to work with their customers to meet their needs and to remain competitive

## ARMIS 43-05: Installation and Repair Intervals (Interexchange Access) - All Special Access

Year	Service Metric Description	ILEC Average
2000	% Provisioning Commitments Met	86.5
2000	Average Repair Interval (in hours)	5.2
2001	% Provisioning Commitments Met	89.3
2001	Average Repair Interval (in hours)	5.5
2002	% Provisioning Commitments Met	94.6
2002	Average Repair Interval (in hours)	4.7

Source: ARMIS 43-05 Service Quality Reports as filed with the FCC and extracted from the FCC's web site

## Negotiation is the Preferred Approach

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- Negotiation is a more flexible tool to address the needs of the special access marketplace
  - BellSouth and SBC have signed multiple pricing flexibility contract tariffs containing specific service level agreements (SLAs) that include performance measurements and standards for these special access customers
  - At customers' request, RBOCs are willing to negotiate the customization of their SLAs by service type, index, and associated measurement weights



## JCIG Special Access Performance Measurements and Standards

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- The performance standards proposed by JCIG are burdensome, unrealistic and unachievable
  - The JCIG's performance measures and standards are burdensome to achieve and do not reflect true market conditions
  - A number of the standards recommended by JCIG are arbitrary and have no commercial basis or statistical validity
  - JCIG provides no justification for recommended performance standards
  - JCIG targets show lack of knowledge of the complex business of provisioning and maintaining special access circuits
  - Commission must consider costs when establishing service level standards
  - The marketplace and competition should determine the appropriate special access service level performance



# JCIG Special Access Performance Measurements and Standards (cont.)

## RBOC Special Access Reporting Matrix

<i>Special Access Performance Measures</i>	<b>ARMIS 43-05 REPORT</b>	<b>Section 272(e)(1) Measures</b>	<b>JCIG Measures</b>
<i>Ordering</i>			
1. FOC Receipt		•	•
2. FOC Receipt Past Due			•
3. Offered Vs. Requested Due Date			•
<i>Provisioning</i>			
4. On Time Provisioning Performance	•	•	•
5. Days Late			•
6. Average Intervals	•	•	•
7. Past Due Circuits			•
8. New Installation Circuit Failure Rate			•
<i>Maintenance and Repair</i>			
9. Failure Rate		•	•
10. Mean Time to Restore	•	•	•
11. Repeat Trouble Rate			•
<i>Total Measures</i>	3	5	11

- The RBOC SPA Reporting Matrix illustrates current RBOC reporting of special access data
- The RBOCs are required by the FCC to produce two different sets of SPA results
  - ARMIS (annually)
  - 272 Reporting (monthly)
- ARMIS and 272 reporting is only required for the RBOCs
- Additional mandated reporting of special access performance measurements would be excessive
- None of the mandated FCC reports are, nor is the JCIG proposed measurement set, applicable to CLECs

# JCIG Special Access Performance Measurements and Standards (cont.)

## Examples of Measurement Definition Concerns

- SA-6 Average Intervals

- Requested, offered, and delivered. Inclusion of (CNR's) will degrade the meaning of SA-6. CNRs are typically the largest cause of missed due dates.
- Only by excluding CNR conditions as an RBOC miss, can an accurate assessment of an ILEC's installation interval be made.
- By introducing Customer Not Ready conditions into this measurement, it will be impossible to discern whether the ILEC is performing satisfactorily or if customers' or end-users' delays are the problem.

- SA-8 New Installation Failure Rate

- The inclusion of repeat trouble reports in JCIG's definition of New Installation Failure Rate is problematic and leads to concurrent reporting of maintenance results in three different JCIG measurements, SA-8, SA-9 Failure Rate, SA-11 Repeats.
- The above leads to excessive/redundant reporting of failures. Duplication is a concern when considering that JCIG wants to make JGIC measures punitive on a per occurrence basis.



# JCIG Special Access Performance Measurements and Standards (cont.)

## Examples of Measurement Definition Concerns

- Failure Rate measures (SA-8, SA-9, & SA-11)
  - These three measures include troubles closed to TOK. This inclusion drives failure rates up, even though the RBOC does not detect a trouble in their network. This measurement problem distorts the picture of network reliability. Furthermore, it allows for customers to neglect their trouble isolation responsibilities and push them to the RBOCs. As a result of this concern, BellSouth's SLA proposal includes a business rule, TOK and NTF not to exceed 10% of the total measured reports in any given period, to mitigate the problem.
  - RBOCs believe that Special Access measurements are not necessary, however, if they are implemented the RBOCs request that the measurements be unbiased and not be subject to manipulation or distortion. Typically up to 50% of troubles reported to an RBOC by an IXC are charged to non-productive codes, meaning they are either attributable to the IXCs or end-users, or are TOK. However, the IXC community incurs no penalties for poor isolation quality. This is a burden the RBOCs assume as a cost of doing business in the highly competitive Special Access market and none of these shortcomings are factored into JCIG's measurements. Language is included in BellSouth's Interstate tariff in Section 2.3.11 and the NIIF (Part 1, Section 5), which says that the customer is obligated to sectionalize before reporting to BellSouth. However, there is no penalty associated with reporting troubles that do not belong to the RBOC.



## JCIG Special Access Performance Measurements and Standards (cont.)

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JCIG measures by their definition are subject to customer factors outside the RBOCs' control and therefore results can be skewed. Thus, standards missed could unfairly drive costs to the RBOCs

- **SA-1** (No provision for delays due to IXC)
- **SA-2** (No provision if an FOC cannot be returned due to IXC delay)
- **SA-3** (Can be manipulated by unreasonable DDD, ie. Zero days)
- **SA-4** (Business Rule 2 could delay multiple orders for IXC reasons)
- **SA-5** (the SO is a contract, Rule 5 puts CNR onus on RBOC not IXC)
- **SA-6** (No way to exclude long intervals requested by the IXC)
- **SA-7** (the SO is a contract, Rule 5 puts CNR onus on RBOC not IXC)
- **SA-8** (IXC reporting of TOK and NTF trouble could distort result)
- **SA-9** (IXC reporting of TOK and NTF trouble could distort result)
- **SA-10** (IXC caused delays to closing can lengthen intervals)
- **SA-11** (Poor IXC trouble isolation could lead to multiple TOK, FOK reports)
- Counting the same tickets in multiple categories is patently unfair

# Unlawful Fines, Forfeitures and Penalties

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- JCIIG's enforcement proposal is unlawful.
  - The proposal disregards statutory and constitutional procedural protections and the Commission's inability to impose liquidated damages.
  - The proposal would set performance benchmarks at unreasonably high levels, effectively guaranteeing a flow of penalty payments for service quality that, by any legitimate measure, already is just and reasonable.
  - The proposal improperly equates missing even one metric with a statutory violation.
  - The proposals would produce unconscionable penalties, combining redundant and correlated metrics with potential triple liability (through tariffed service credits, damages to CLECs, and forfeitures).